IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 852 OF 2006

Sou. Kalawati Venkatswami Yadgiri & Ors....Appellants
V/s.
Shri Hiralal Ambuja Indapure & Anr. ...Respondents

Mr.S.D. Thokade for the Appellants.
Mr.S.S. Shah for Respondent Nos.1 and 2.

CORAM : V.M. KANADE, J.

DATED : JULY 26, 2007

P.C. :-

. Heard the learned Counsel for the appellants and the learned Counsel for the respondents.

2. The appellants are the original defendants. The respondents - the original plaintiffs filed the suit for specific performance of the agreement dated 6.3.92. The trial Court decreed the suit. Against the said order, the appellants preferred an appeal, however, the District Court also dismissed the appeal by judgment and order dated 6.2.2006.

3. It is submitted by the learned Counsel for the appellants that the trial Court had not exhibited the

xerox copy of a receipt which was produced by the appellant. He submitted that the trial Court ought to have compared the signature of the respondent-plaintiff with the signature on the said receipt and thereafter, should have taken into consideration the said document in evidence. He submitted that the said receipt clearly indicated that the agreement of sale dated 6.3.92 was not an agreement of sale but was a loan transaction. He submitted that the lower Appellate court also erred in holding that the said receipt was not a reconveyance deed. He submitted that both the courts below erred in holding that the said document is not proved in the manner laid down under Section 65(a) of the Evidence Act. He relied on the judgment of the Apex Court in the case of **K.S. Satyanarayana, Appellant v. V.R. Narayana Rao, Respondent, reported in AIR 1999 Supreme Court 2544.**

4. It is not possible to accept the submission made by the learned Counsel for the appellant. It is an admitted position that the said document viz. the xerox copy which was produced by the appellant was not proved

by following the procedure laid down under Section 65(a) and therefore, the question of comparing the two signatures by the Court under Section 73 under the Evidence Act does not arise. In any event, the lower Appellate Court has considered the said documents though it was not duly proved and has recorded a finding that the document does not disclose that it was connected with the sale transaction or that the agreement dated 6.3.92 was in fact a money lending transaction. Thus the submission made by the learned Counsel appearing on behalf of the appellant cannot be accepted in view of the concurrent findings recorded by both the courts below. No substantial question of law is raised in this appeal.

5. Second Appeal, accordingly, is dismissed. Connected Civil Application also does not survive and is disposed of as such.

(V.M. KANADE, J.)